IN THE HIGH COURT OF JJUDICATURE AT MADRAS

DATE: 07-07-2006

CORAM:

THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN

W.P.Nos.18228, 20963, 18377, 18378 & 20977 of 2006
and
M.Ps.1 of 2006 in all petitions and M.P.2/2006 in W.P.18228/06

In W.P.No.18228/2006:

M. Bhuvanesh ... Petitioner

Vs.

1. The Government of Tamil Nadu
Rep. by its Secretary
Department of Medical Education
Fort St. George, Chennai - 600 009

2. The Selection Committee
Rep. by its Secretary
Directorate of Medical Education
162, Periyar EVR High Road
Kilpauk, Chennai - 600 010. ... Respondent 1 & 2 in WP.20963, 18377, 18378 & 20977/06

3. The Director of Medical Education
162, Periyar EVR High Road
Kilpauk, Chennai - 600 010. ... Respondents

WP.No.20963/06

Ponmanimekala ...Petitioner

Vs

3. The Anna University,
rep.by its Registrar,
Guindy, Chennai-25. ...Respondent

WP.No.18377/06

D.Aarthi Aishwarya ...Petitioner

vs

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

3. The Anna University,
rep.by its Registrar,
Guindy, Chennai-25. ...Respondent

WP.No.18378/06

G.Saranya Devi ...Petitioner

Vs

3. The Anna University,
rep.by its Registrar,
Guindy, Chennai-25. ...Respondent

WP.No.20977/06

A.Murugesan ...Petitioner

vs

The Secretary,
Selection Committee for MBBS & BDS Courses,
no.162, EVR Salai,
Chennai-10. ...Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified mandamus,

WP.No.18228/06

Calling for the records of the respondents relating to note 1 of Clause and sub Clause (iii) of 8 of the MBBS/BDS Admissions prospects 2006-2007 and quash the same and consequently direct the authorities to consider the improvement marks scored by the petitioner in the year 2005 for consideration for medical admission for the academic year 2006-2007.

WP.No.20963/06; WP.No.18377/06; WP.No.18378/06

direct the respondents to reckon the improvement test marks attained by the petitioner in the year 2005-2006 along with the Common Entrance test marks of the year 2006-2007 for fixing the rank of the petitioner in the merit list to be drawn by the 3rd respondent for admission to the medical College in the State of Tamil Nadu.

WP.No.20977/06

Writ of Mandamus directing the respondent to take the petitioner's +2 improvement examination mark as qualifying mark and publish the rank list of the petitioner for the MBBS admission for the academic year 2006-2007 as stated therein.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

For petitioner :: Mr. Kandavadivel Doraisamy
For respondents :: Mr. G. Sankaran, Government Pleader

COMMON ORDER

In these writ petitions the grievance of the petitioners is that the improvement marks obtained by them will not be taken into account for the purpose of admission to medical colleges since the prospectus for the MBBS - BDS course shows that,

> 4(i) Candidates should have passed in all the subjects of the qualifying examination of the Higher Secondary Certificate Examination (Academic) conducted by the Tamil Nadu State Board in one and the same attempt in the following group of subjects with the minimum eligible marks.
>
> (a) Physics, Chemistry, Botany and Zoology.
> (or)
> (b) Physics, Chemistry, Biology with any other subjects.
> ...
> Note: i) The Marks obtained in the qualifying examinations in the relevant science subjects in the first appearance only will be taken into consideration for the allotment of seats of candidates and the improvement marks in +2 examination of any year will not be considered."

According to them, when they wrote the improvement examination their original marks stood erased and therefore, now they will not have the benefit of either the original mark or the improvement mark and they would stand at a disadvantage. It was further submitted that for engineering college students the improvement mark is taken into account and there cannot be any discrimination between students applying for Engineering Courses and students applying for medical courses and also if the improvement mark is taken into account for engineering course, then each student will have two different aggregate of marks, one for the purpose of admission in the engineering college and other for the purpose of admission in the medical college. This would be totally irrational. It was also submitted that these students had genuinely believed that they can take advantage of the improvement marks and they had therefore, wasted an academic year in the hope that with the improvement marks they would be able to secure admission in the medical course. This is the sum and substance of the submissions advanced by the learned senior counsel for the petitioner.

2. Mrs. Nalini Chidambaram, learned Senior Counsel appearing for the petitioners in W.P.Nos.20963,18377, 18378 of 2006 and Mr. Kandavadivel Doraisamy, learned counsel appearing for the petitioner in W.P.No.18228 of 2006 and Mr. S. Packiaraj, learned counsel appearing for the petitioner in W.P.No.20977 of 2006 would rely on the Judgment reported in S. Mohamed Razeen Vs. The Govt. of Tamil Nadu (2005 (3) CTC 449) to support their case.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

3. The learned Special Government Pleader appearing on behalf of the respondents would submit that they are not entitled to any relief and that in fact, the same judgment which the petitioners rely on, clearly shows that for the academic year 2006-07, the improvement marks cannot be taken into account. The learned Special Government Pleader also submitted that when the prospectus makes it clear that what is the criterion for admission to medical course, it is not for the petitioners to attack the same. The fact that there is a difference between the admission to medical college and admission to engineering college, will not make a difference to the conclusion since the seats for engineering college are many more than the seats that are available for a medical college. It was also submitted that the facility to allow students to write the improvement examination itself is granted an indulgence and not as a matter of right.

4. The question of improvement marks has come up for consideration in several matters decided by this court. In Poovizhi V. Government of Tamil Nadu (AIR 2002 Madras 235), the attack was that, earlier the candidates could appear in one or more subject for the improvement examination and improve their marks and the subsequent changes in the policy requiring the students to cover all the subjects was attacked as arbitrary. The First Bench of this court held that the framing of education policy is an action within the realm of the government and the court has got a limited role to play in exercise of its power of judicial review. However, the Division Bench set at naught the impugned G.O., insofar as its retrospective operation is concerned and made it clear that it would come into effect for the improvement examination from September 2002 onwards.

5. Again, there was another batch of writ petitions, which was decided by the First Bench on 02-08-2004. Here, the tussle was between freshers and improvement candidates. Here again, the First bench refused to interfere with the policy on the ground that as long as the Scheme of improvement is available to all and is available to the one who is opting, if he is not permitted for admission by way of competition along with freshers then hs entire effort will go waste. In this decision, however, the concession given for seniority in age was made applicable only inter se freshers or inter se improvement candidates and not between a fresher and an improvement candidate.

WEB COPY

6. In the judgment reported in 2005 (3) CTC 449(cited supra) G.O. Ms.No.184, Higher Education, J.2 Department dated 09-06-2005, which abolish the common entrance test and discontinued the improvement examination for the academic year 2005-2006 came up for consideration. The First Bench of this Court while quashing the said G.O. insofar as relates to the abolition of the Common Entrance Test, upheld it insofar as it related to the abolition of improvement examination, on the ground that it is a policy decision and that there was no violation of any statute or constitutional provision by cancelling improvement test nor was there any shocking arbitrariness in the Wednesbury sense. But the observations of the Division bench which the petitioners want to rely on is as follows:

https://hcservices.ecourts.gov.in/hcservices/

> "However, since in this year the improvement examination has already been held and the common entrance test has also been held, it would not be proper to cancel the

improvement examination for this year, but for the academic year 2006-2007 and onwards the improvement test need not be held by the authorities, unless they choose to restore it."

7. According to them, this benefit should accrue to those who had appeared for the improvement examination in 2005 and it was open to the authority to hold or not to hold the improvement test for the academic year 2006-2007 onwards. It was submitted that the fact that the Authorities had the liberty to decide to hold or not the improvement examination for the academic year 2006-2007 would not mean that the right accrued to the petitioners by virtue of having appeared for the improvement examination in 2005 would be taken away since the Division Bench had held that it would not be proper to cancel the improvement examination.

8. On the other hand, the same paragraph is referred to by the State to show that this observation would not enure to the benefit of the students for ever. It was only for that academic year and not for subsequent years and the petitioners cannot permanently take advantage of the improvement examination in the year 2005 or in any of the years prior to that. One of the petitioners before us has taken the examination in 2004. All the students want to derive the benefit of improvement examination marks for the academic year 2006-2007. A Judgment will have to be read as a whole. It would be dangerous to extract some paragraphs and try to decide the reasoning or the ratio laid down by the Court. The G.O. Clearly states,

> -... The practice of allowing students to take improvement examination thereby improving their +2 marks for admission in the Professional Course be discontinued from the academic year 2005-2006.
>
> 8. The Government further direct that the marks of the students who have taken the improvement examination during 2005-2006 will not be taken into account for consideration for admission to professional courses. If they choose to seek admission to professional courses during 2005-2006, the marks obtained by them in their first attempt will alone be taken into account."

WEB COPY

9. In Paragraph Nos.6 and 7 of the judgment the case of the petitioners is set out.

> "6. lt is alleged that the common entrance examination for admission to MBBS course for the academic year 2005-2006 was held on 23-04-2005 and the result of the same was declared on 12-05-2005. The result of the plus 2 (class 12) State Board examinations was declared on 17-05-2005.
>
> 7. The petitioner's grievance is that having been permitted to take the improvement as well as common entrance examination for admission to MBBS course for the academic year 2005-2006, the State has no right to change the procedure for admission/selection, particularly after the same had been announed for the academic year 2005-2006, and the petitioner had acted on that announcement and had appeared in the entrance and

https://hcservices.ecourts.gov.in/hcservices/

improvement test after a great deal of preparation involving time and money."

10. After considering the rival contentions of the counsel and the various decisions relied on, the Division Bench held,

> 76. We are not inclined to interfere with that part of the impugned g.o. which abolishes the improvement test, as the decision is a policy decision which does not conflict with any statutory rule or regulation nor can it be said to be shockingly arbitrary in the Wednesbury sense. However, we are of the opinion that the said abolition should only apply from next year.
>
> 77. In Poovizhi V. Government of Tamil Nadu, AIR 2002 Mad 235 = 2002 (1) MLJ 590, it was observed that a decision can be enforced for the next year. In view of the aforesaid decision of this Court, we hold that so far as the improvement test is concerned, the abolition is valid but it will come into effect from the academic year 2006-2007 onwards."

Therefore, what follows is that the practice of allowing the students to take the improvement examination for admission to Professional course was discontinued from the academic year 2005-2006. This was upheld by the Division Bench, protecting the rights of the students "for this year" alone. Therefore, no student will be entitled to rely on the improvement marks for admission to Professional courses from the academic year 2006-2007 onwards. This is the only logical interpretation of the judgment and further clause (8) of the G.O., which declares that the marks obtained by them in the +2 examination in the first attempt alone would be taken into account makes it clear. The prospectus for the MBBS and BDS course is in consonance with the above G.O. It is not open to the students to claim that the marks obtained by them in the improvement examination of the year 2005 must be counted for the admission for the year 2006-2007in the face of the decision of the First Bench and Paragraph No.8 of the G.O. which has been upheld.

11. As regards the claim of discrimination between engineering students and medical students, reliance was placed on Nithiyan P. &S.P. Prasanna Vs. State of TamilNadu (1994 Madras 624) where the fixing of age for MBBS was attacked as arbitrary since it was not so stipulated for the other courses. This attack was rejected by the Division Bench as follows:

> "10. We are not able to agree with the contention of the learned counsel that for other professional courses, the minimum age is not prescribed as 17years. Every professional course is a different and independent couse and as such all Professional courses, viz. Medicine, Engineering, Agriculture etc. cannot be treated as one and the same. Students entering the medical college constitute two different classes so that the prescription of age limit for M.B.B.S. Course alone, in our view, is not in violation of Art.14 of the Constitution of India."

12. There can be various reasons why the Government chooses to include the improvement marks for Engineering students and not for Medical students. One such reasons given by the learned Government Pleader, is

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

that there are numerous seats available in Engineering colleges, but the seats in Medical Colleges are limited. We should also take note of the fact that only few students who have taken the improvement test only seem to have come to this Court. The others have understood the judgment of this Court as well as the G.O. to mean that they are not entitled to take the benefit of the improved marks from the academic year 2006-2007 onwards. Their understanding of the judgment and the G.O. is perfectly correct and if we were to grant an indulgence to these few petitioners, it would result in injustice. In any event, the scheme of improvement marks framed by the Government is only a matter of indulgence and no student could claim that he is Entitled to have improvement examination conducted every year.

13. I am making a slight detour with regard to the effect of these marks on our students. Students come to the Court claiming that they have a right to take the improvement test, there are students who oppose it, students want retotalling or valuation. Why? Because their future hinges upon addition of a decimal point in their marks. They feel that their world will come to an end if they do not join the particular course of their choice. There can be no doubt that acute mental pain is caused to those tender minds, and some even choose to end their lives, not because they have failed but because eventhough they have passed they have lost, the seat of this choice by a few decimal points or a few marks. In this context, I would like to extract the following passages from the Column Point of View by Mr. Bhaskar Ghose called "Determining excellence" in the Frontline issue dated 30th June, 2006.

> "The frenzied attempts to get into the colleges perceived to be the best for their chosen couses translate finally into the marks that the student has – the best of four, as youngsters know only too well. Here even decimal points count; a student who has 0.5 per cent less than the 'cut-off' marks has no chance whatsoever of getting in. It is as if he has failed. And only because his average in four subjects was 0.5 per cent less than that of some others, even though it is, say, 85 per cent.
>
> ...Are we – that is, we as a society, we as people who try to think rationally – then telling our young school students that what matters is not how well you do, or how well you know your subject, but whether some other students get just 0.5 per cent more than they do?
>
> There is, surely, something wrong here. ... There are many who end their lives because they have failed, in terms of marks, but one is referring here to those who have done well by all standards and yet choose to die.
>
> .. it is essential that a close look be taken at the issue in its entirety, at the way in which we evaluate the intelligence and knowledge that our young have acquired.
>
> ... How are they to work out a system that is fair, how can they ensure that they admit those who have done not just well, but better than others?
>
> ... While respecting the problem they have to face every year, and seeing some degree of logic in the solution they have devised to bring some order to the process of admittance, one has to admit that the solution is not quite as valid as teachers and

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

principals would like to say it is. It is too facile, and, more dangerously, not really a valid assessment of the worth of those students being taken in and and those being turned away.

... Just how is a child's knowledge of, say, geography, rated to be 61.5 per cent and not 60 per cent? If the answer is that the figure is the total of the marks awarded for individual answers, then which answer could have been so finely graded as to come up with an overall figure that is so ludicrous as a measure of a child's knowledge?

... Do any of the worthies in our examining bodies really think that comprehension can be measured in fractions? And if it cannot be, why are they imposing such system on the young?

There has been talk from time to time of doing away with examinations, but we know that it is just that, talk. Nothing will really be done, and this traumatising and, yes, cruel system will continue. Bright young children will be confronted by the stony decimal ponts that tell them that no matter how intelligent they are, or how much they have learned, they are adjudged failures in their own eyes. That, really, is the terrible truth; we have taught our young to believe in these systems so completely that it is they who consider themselves failures when they are up against these absurd decimal points and cut-off marks."

One feels anguish looking at the long queues of young ones standing as litigants. I earnestly hope that the people in power work out a policy, not in kneejerk reaction to something that is happening now, or because it is politically expedient, but a well-thought-out farsighted policy which will have the well-being of our country's future citizens at the top priority. This will be in tune with Article 39(F) of our Constitution which reads as follows:

"that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

14. The learned Special Government Pleader submitted that if the petitioners make a request that they are willing to give the mark sheet with the original marks of the students in those subjects which they had obtained in their first attempt. This alone is material for admission into MBBS and BDS courses as seen from the extract of the prospectus supra.

15. For these reasons, the writ petitions fail and are dismissed with a direction to the Director of Examination to issue mark sheets as per the marks obtained by the students in their first attempt, if they make a request. If the students have given their improvement marks in their application, they shall be permitted to carry out the necessary amendments in their application as soon as they receive the mark sheets bearing the marks obtained by them in their first attempt. The application submitted may not be rejected merely on the score of this error in the application. The respondent shall not reject any of the applications of these petitioners only on the ground of delay since they are not responsible for this delay.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

16. However, there will be no order as to costs. The connected Miscellaneous Petitions also stands dismissed.

glp

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Government of Tamil Nadu
   Rep. by its Secretary
   Department of Medical Education
   Fort St. George, Chennai - 600 009

2. The Selection Committee
   Rep. by its Secretary
   Directorate of Medical Education
   162, Periyar EVR High Road
   Kilpauk, Chennai - 600 010

3. The Director of Medical Education
   162, Periyar EVR High Road
   Kilpauk, Chennai - 600 010

4. The Registrar,
   The Anna University,
   Guindy, Chennai-25.

1 cc To Mr.S.Packiaraj, Advocate, SR.29467.
1 cc To M/S.Gladys Daniel., Advocate, SR.29378.
1 cc To M/S.G.M.Mani Associates, Advocate, SR.29373
1 cc To The Government Pleader, SR.29605.

WEB COPY

GGK(CO)
RVL 27.07.2006

https://hcservices.ecourts.gov.in/hcservices/